

ARKANSAS COURT OF APPEALS

DIVISION III
No. CACR08-1375

VIRGINIA LEE RILEY

APPELLANT

V.

STATE OF ARKANSAS

APPELLEE

Opinion Delivered JUNE 3, 2009

APPEAL FROM THE MARION
COUNTY CIRCUIT COURT,
[NO. CR-06-76-4]

HONORABLE GORDON WEBB,
JUDGE

AFFIRMED

RITA W. GRUBER, Judge

Virginia Lee Riley was charged with the crime of theft of property for selling cattle that belonged to Leroy Cagle, who leased grazing land from her. Riley was convicted of the charge in a bench trial, and she was sentenced to five years' probation and a \$5000 fine. On appeal she acknowledges that the cattle were sold, but she contends that the State did not present sufficient evidence that she had the requisite intent to commit theft. We affirm.

A person commits theft of property if she knowingly:

- (1) Takes or exercises unauthorized control over, or makes an unauthorized transfer of an interest in, the property of another person, with the purpose of depriving the owner of the property; or
- (2) Obtains the property of another person, by deception or by threat, with the purpose of depriving the owner of the property.

Ark. Code Ann. § 5-36-103(a) (Repl. 2006).

The record in the present case includes a letter written by the circuit court to

document the court's findings and verdict. The letter stated that the court had spent a great deal of time reviewing the evidence, "specifically, some CD's" containing statements from Riley (to the officer who investigated the theft). Addressing Riley's argument that there was no evidence of intent to deprive Cagle of his property, the court stated:

The Court finds . . . that Ms. Riley lied repeatedly to both the alleged victim of this case and to law enforcement officers in regard to what had happened to the cattle after they had disappeared from her land which was the subject of a civil rental dispute. In the end, she admitted that she had not been telling the truth and that she had lied about all of this because she was concerned of being sued civilly. The Court finds that her lies were too extensive and clearly intended to prevent both the victim and/or the Sheriff's Office in being able to track down the location of the cattle. This clearly shows the intent to deprive the owner of his property.

The defense's argument also had to do with the fact that ultimately Ms. Riley paid a substantial premium to recover the cattle and to return them so there was no actual lose [sic] suffered by the victim. However, this only occurred after the matter was well under investigation and is tantamount to the traditional explanation that a bank robber cannot bring the money back and expect to be forgiven for the offense of Robbery.

The court did not find Riley's testimony to be "entirely credible, even substantially after the fact," nor did it give credibility to her claim that she never had any intent to steal the cattle. The court stated that Riley's "extensive and repeated lies" convinced the court beyond a reasonable doubt that her intent was to deprive Cagle of his cattle.

In reviewing a challenge to the sufficiency of the evidence, we consider only the evidence that supports the verdict, viewing the evidence in the light most favorable to the State. *Harris v. State*, 72 Ark. App. 227, 35 S.W.3d 819 (2000). Resolution of conflicts in testimony and assessment of witness credibility are for the trier of fact. *Id.* The test for determining sufficiency of the evidence is whether substantial evidence, direct or

circumstantial, supports the verdict. *Ross v. State*, 346 Ark. 225, 57 S.W.3d 152 (2001).

Substantial evidence is evidence of sufficient certainty and precision to compel a conclusion one way or another and pass beyond mere suspicion or conjecture. *Id.* Evidence of guilt is not less because it is circumstantial. *Id.* Overwhelming evidence of guilt is not required in cases based on circumstantial evidence; the test is one of substantiality. *Id.* Circumstantial evidence, in order to be substantial, must exclude every other reasonable hypothesis than the guilt of the accused. *Id.* The question of whether circumstantial evidence excludes every hypothesis consistent with innocence is for the fact-finder to decide; the question for the reviewing court is whether the fact-finder resorted to speculation and conjecture in reaching its verdict. *Id.*

The evidence viewed in the light most favorable to the State is as follows. Under her initials and maiden name, V.L. Key, Riley leased land to Cagle for a year beginning in January 2004, subject to conditions about overgrazing, bush-hogging, and locking the gate. The lease was renewed in January 2005. But in February and March of 2006, after a dispute arose, Riley sent Cagle notices attempting to terminate the lease and evict Cagle and his cattle from her property. He did not remove his cattle. In a letter of March 29, 2006, Riley wrote Cagle that she had decided “to avoid any legal expenses and ramifications” with him, to sell the property, to leave the state, and to purchase a farm in another state with no need to rent pasture land because it was desert. She stated in the letter that there would be a new owner of her land in April 2006, that Cagle could remove his cattle before transfer of ownership, but that any cattle remaining afterward would become the new owner’s property.

Through an ad in the *Arkansas Democrat-Gazette* in early May 2006, Riley offered to sell fifteen cows and ten calves at a “Great Deal” price of \$5500 “to cover boarding fees.” Josh Rogers, who initially thought the ad was a misprint, responded to it. He bought the cattle after Riley told him that the price was for back lease or grazing costs and that she was selling the cattle because Cagle still had not gotten them after she had sent notices and notified the sheriff. Riley told Rogers that she did her billing through The Christ School, to which he made his check. “The Christ School, Inc.,” was printed at the top of the sales agreement; below the school’s name was the same telephone number published in the newspaper ad, 254-707-6028, along with the address “2805 Oak Trail Ct., Suite 6377” in Arlington, Texas. In actuality, however, the school was a Florida non-profit corporation involuntarily dissolved in 1989, with Riley as the registered agent and an officer/director.

Sheriff Carl McBee testified that he had seen three March 2006 letters from Riley to Cagle that referred to the sheriff’s assistance in removing the cattle from her property or arresting Cagle for trespassing. Sheriff McBee said that he had never been contacted about taking such actions but that Cagle had filed a report with the sheriff’s department about the missing cattle.

In May 2006, Riley was interviewed at her residence by Lt. Nathan Rogers of the department’s Criminal Investigation Division. Lt. Rogers telephoned ahead to let her know that he was coming. She initially told him that Cagle had been served with eviction papers, that one day she “just noticed the cattle were gone,” that she “sold the property to [T]he Christ School and they possibly had sold the cattle for boarding fees,” and that the school was

not active. Lt. Rogers was unable to contact anyone at the phone number Riley gave him, which was the number in the newspaper ad. Riley contacted him later the same day and said that she had spoken to the school, that the school had the cattle but sold them, and that the school had agreed to reimburse the buyer but that Cagle would have to go get them. A CD of the earlier interview was placed into evidence and played.

Lt. Rogers later found out that a “large number” of things Riley had told him were inaccurate, and he confronted her about a social security number that appeared in a complaint she filed against Cagle. She told him that it was a tax ID number for The Christ School, but it was not a tax number and it belonged to an individual. Riley eventually revealed her correct number. Riley telephoned Lt. Rogers to say that she had found out who purchased the cattle. She gave him a telephone phone number, which he used to locate the cattle purchased by Josh Rogers. Lt. Rogers conducted and recorded a second interview of Riley that was admitted into evidence for the court to listen to later. In the second interview, Riley admitted selling the cattle and said that she was president of The Christ School, which sold the cattle to Josh Rogers.

Riley maintains on appeal that the circuit court convicted her because of her “small amount of lying and deception” after she sold Cagle’s cattle because of his refusal to move them. She explains that she was dishonest with Lt. Rogers because she became afraid when she found out that the case was a criminal matter rather than a civil one. She concludes that the evidence presented does not compel a decision one way or the other. These arguments are without merit.

One's intent can rarely be proven by direct evidence but must usually be inferred from the circumstances. The circuit court, sitting as the trier of fact, determined that Riley's testimony lacked credibility and gave no credence to her statement that she never intended to steal Cagle's cattle. Her letters to Cagle contained misrepresentations about her contact with the sheriff's department, a transfer of her land to a new owner, and her own plans to leave the state, all of which were non-existent events. She lied to Josh Rogers about sending notices to Cagle and about involving the sheriff's department. Her story to Lt. Rogers contained a "large number" of inaccuracies, which also could be considered as evidence of guilt. See *Brenk v. State*, 311 Ark. 579, 585, 847 S.W.2d 1, 5 (1993). From this circumstantial evidence, we think that the fact-finder could properly infer that Riley sold Cagle's cattle with the purpose of depriving him of them. Circumstantial evidence will suffice where it can lead to no other reasonable hypothesis than the guilt of the accused.

Affirmed.

GLADWIN and GLOVER, JJ., agree.